

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 02-0292P
Supplemental Net Income Tax (Premium Tax)
For Calendar Years 1996 and 1997**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is an insurance company. Although the taxpayer is not subject to gross income tax, it is liable for an apportioned amount of adjusted gross income tax because it has inventory in the state of Indiana.

Taxpayer filed a penalty protest letter dated January 18, 2002.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that it elected to pay premium tax rather than income tax. Taxpayer states that until it filed its 1999 return, it believed this election exempted it from paying any tax in Indiana other than premium tax. Upon discovering that it should be paying supplemental income tax along with premium tax, it immediately paid the amount due for 1999 and sent amended returns for 1996 through 1998 with a check in the amount of \$171,263.00. Taxpayer believes it made a conscientious effort to correct its original oversight and requests a waiver of the penalty.

Domestic insurance companies have the option of either paying premium tax or gross income tax. Regardless of which option they choose, they are subject to supplemental net income tax. Taxpayer incorrectly calculated supplemental net income tax that resulted in an underpayment of

\$53,588 in 1996 and \$57,453 in 1997.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer's protest is denied.